



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB1867

Introduced 2/15/2013, by Sen. Chapin Rose

#### SYNOPSIS AS INTRODUCED:

750 ILCS 45/5	from Ch. 40, par. 2505
750 ILCS 45/6	from Ch. 40, par. 2506
750 ILCS 45/7	from Ch. 40, par. 2507

Amends the Illinois Parentage Act of 1984. Provides that a man may bring an action to declare the non-existence of the parent and child relationship, even after the man has signed an unrescinded acknowledgment of parentage, if, as a result of deoxyribonucleic acid (DNA) tests, it is discovered that the man adjudicated to be the father is not the natural father of the child. Effective immediately.

LRB098 08701 HEP 38823 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Parentage Act of 1984 is amended by  
5 changing Sections 5, 6, 7, and 8 as follows:

6 (750 ILCS 45/5) (from Ch. 40, par. 2505)

7 Sec. 5. Presumption of Paternity.

8 (a) A man is presumed to be the natural father of a child  
9 if:

10 (1) he and the child's natural mother are or have been  
11 married to each other, even though the marriage is or could  
12 be declared invalid, and the child is born or conceived  
13 during such marriage;

14 (2) after the child's birth, he and the child's natural  
15 mother have married each other, even though the marriage is  
16 or could be declared invalid, and he is named, with his  
17 written consent, as the child's father on the child's birth  
18 certificate;

19 (3) he and the child's natural mother have signed an  
20 acknowledgment of paternity in accordance with rules  
21 adopted by the Department of Healthcare and Family Services  
22 under Section 10-17.7 of the Illinois Public Aid Code; or

23 (4) he and the child's natural mother have signed an

1 acknowledgment of parentage or, if the natural father is  
2 someone other than one presumed to be the father under this  
3 Section, an acknowledgment of parentage and denial of  
4 paternity in accordance with Section 12 of the Vital  
5 Records Act.

6 (b) A presumption under subdivision (a)(1) or (a)(2) of  
7 this Section may be rebutted only by clear and convincing  
8 evidence. A presumption under subdivision (a)(3) or (a)(4) is  
9 conclusive, unless the acknowledgment of parentage is  
10 rescinded under the process provided in Section 12 of the Vital  
11 Records Act, upon the earlier of:

12 (1) 60 days after the date the acknowledgment of  
13 parentage is signed, or

14 (2) the date of an administrative or judicial  
15 proceeding relating to the child (including a proceeding to  
16 establish a support order) in which the signatory is a  
17 party;

18 except that if a minor has signed the acknowledgment of  
19 paternity or acknowledgment of parentage and denial of  
20 paternity, the presumption becomes conclusive 6 months after  
21 the minor reaches majority or is otherwise emancipated.

22 (c) Notwithstanding the provisions of subsection (b) of  
23 this Section, a presumption under subdivision (a)(3) or (a)(4)  
24 may also be challenged in an action brought under subsection  
25 (b-5) of Section 7 of this Act.

26 (Source: P.A. 95-331, eff. 8-21-07.)

1 (750 ILCS 45/6) (from Ch. 40, par. 2506)

2 Sec. 6. Establishment of Parent and Child Relationship by  
3 Consent of the Parties.

4 (a) A parent and child relationship may be established  
5 voluntarily by the signing and witnessing of a voluntary  
6 acknowledgment of parentage in accordance with Section 12 of  
7 the Vital Records Act, Section 10-17.7 of the Illinois Public  
8 Aid Code, or the provisions of the Gestational Surrogacy Act.  
9 The voluntary acknowledgment of parentage shall contain the  
10 social security numbers of the persons signing the voluntary  
11 acknowledgment of parentage; however, failure to include the  
12 social security numbers of the persons signing a voluntary  
13 acknowledgment of parentage does not invalidate the voluntary  
14 acknowledgment of parentage.

15 (1) A parent-child relationship may be established in  
16 the event of gestational surrogacy if all of the following  
17 conditions are met prior to the birth of the child:

18 (A) The gestational surrogate certifies that she  
19 is not the biological mother of the child, and that she  
20 is carrying the child for the intended parents.

21 (B) The husband, if any, of the gestational  
22 surrogate certifies that he is not the biological  
23 father of the child.

24 (C) The intended mother certifies that she  
25 provided or an egg donor donated the egg from which the

1 child being carried by the gestational surrogate was  
2 conceived.

3 (D) The intended father certifies that he provided  
4 or a sperm donor donated the sperm from which the child  
5 being carried by the gestational surrogate was  
6 conceived.

7 (E) A physician licensed to practice medicine in  
8 all its branches in the State of Illinois certifies  
9 that the child being carried by the gestational  
10 surrogate is the biological child of the intended  
11 mother or the intended father or both and that neither  
12 the gestational surrogate nor the gestational  
13 surrogate's husband, if any, is a biological parent of  
14 the child being carried by the gestational surrogate.

15 (E-5) The attorneys for the intended parents and  
16 the gestational surrogate each certifies that the  
17 parties entered into a gestational surrogacy contract  
18 intended to satisfy the requirements of Section 25 of  
19 the Gestational Surrogacy Act with respect to the  
20 child.

21 (F) All certifications shall be in writing and  
22 witnessed by 2 competent adults who are not the  
23 gestational surrogate, gestational surrogate's  
24 husband, if any, intended mother, or intended father.  
25 Certifications shall be on forms prescribed by the  
26 Illinois Department of Public Health, shall be

1           executed prior to the birth of the child, and shall be  
2           placed in the medical records of the gestational  
3           surrogate prior to the birth of the child. Copies of  
4           all certifications shall be delivered to the Illinois  
5           Department of Public Health prior to the birth of the  
6           child.

7           (2) Unless otherwise determined by order of the Circuit  
8           Court, the child shall be presumed to be the child of the  
9           gestational surrogate and of the gestational surrogate's  
10          husband, if any, if all requirements of subdivision (a)(1)  
11          are not met prior to the birth of the child. This  
12          presumption may be rebutted by clear and convincing  
13          evidence. The circuit court may order the gestational  
14          surrogate, gestational surrogate's husband, intended  
15          mother, intended father, and child to submit to such  
16          medical examinations and testing as the court deems  
17          appropriate.

18          (b) Notwithstanding any other provisions of this Act,  
19          paternity established in accordance with subsection (a) has the  
20          full force and effect of a judgment entered under this Act and  
21          serves as a basis for seeking a child support order without any  
22          further proceedings to establish paternity.

23          (c) A judicial or administrative proceeding to ratify  
24          paternity established in accordance with subsection (a) is  
25          neither required nor permitted.

26          (d) A signed acknowledgment of paternity entered under this

1 Act may be challenged in court only on the basis of fraud,  
2 duress, or material mistake of fact, or in an action brought  
3 under subsection (b-5) of Section 7 of this Act, with the  
4 burden of proof upon the challenging party. Pending outcome of  
5 the challenge to the acknowledgment of paternity, the legal  
6 responsibilities of the signatories shall remain in full force  
7 and effect, except upon order of the court upon a showing of  
8 good cause.

9 (e) Once a parent and child relationship is established in  
10 accordance with subsection (a), an order for support may be  
11 established pursuant to a petition to establish an order for  
12 support by consent filed with the clerk of the circuit court. A  
13 copy of the properly completed acknowledgment of parentage form  
14 shall be attached to the petition. The petition shall ask that  
15 the circuit court enter an order for support. The petition may  
16 ask that an order for visitation, custody, or guardianship be  
17 entered. The filing and appearance fees provided under the  
18 Clerks of Courts Act shall be waived for all cases in which an  
19 acknowledgment of parentage form has been properly completed by  
20 the parties and in which a petition to establish an order for  
21 support by consent has been filed with the clerk of the circuit  
22 court. This subsection shall not be construed to prohibit  
23 filing any petition for child support, visitation, or custody  
24 under this Act, the Illinois Marriage and Dissolution of  
25 Marriage Act, or the Non-Support Punishment Act. This  
26 subsection shall also not be construed to prevent the

1 establishment of an administrative support order in cases  
2 involving persons receiving child support enforcement services  
3 under Article X of the Illinois Public Aid Code.

4 (Source: P.A. 92-16, eff. 6-28-01; 93-921, eff. 1-1-05;  
5 93-1095, eff. 3-29-05.)

6 (750 ILCS 45/7) (from Ch. 40, par. 2507)

7 Sec. 7. Determination of Father and Child Relationship; Who  
8 May Bring Action; Parties.

9 (a) An action to determine the existence of the father and  
10 child relationship, whether or not such a relationship is  
11 already presumed under Section 5 of this Act, may be brought by  
12 the child; the mother; a pregnant woman; any person or public  
13 agency who has custody of, or is providing or has provided  
14 financial support to, the child; the Department of Healthcare  
15 and Family Services if it is providing or has provided  
16 financial support to the child or if it is assisting with child  
17 support collection services; or a man presumed or alleging  
18 himself to be the father of the child or expected child. The  
19 complaint shall be verified and shall name the person or  
20 persons alleged to be the father of the child.

21 (b) An action to declare the non-existence of the parent  
22 and child relationship may be brought by the child, the natural  
23 mother, or a man presumed to be the father under subdivision  
24 (a) (1) or (a) (2) of Section 5 of this Act. Actions brought by  
25 the child, the natural mother or a presumed father shall be

1 brought by verified complaint.

2 After the presumption that a man presumed to be the father  
3 under subdivision (a)(1) or (a)(2) of Section 5 has been  
4 rebutted, paternity of the child by another man may be  
5 determined in the same action, if he has been made a party.

6 (b-5) An action to declare the non-existence of the parent  
7 and child relationship may be brought subsequent to an  
8 adjudication of paternity in any judgment or administrative  
9 determination of paternity made in accordance with Section  
10 10-17.7 of the Illinois Public Aid Code by the man adjudicated  
11 to be the father pursuant to the presumptions in Section 5 of  
12 this Act if, as a result of deoxyribonucleic acid (DNA) tests,  
13 it is discovered that the man adjudicated to be the father is  
14 not the natural father of the child. Actions brought by the  
15 adjudicated father shall be brought by verified complaint. If,  
16 as a result of the deoxyribonucleic acid (DNA) tests, the  
17 plaintiff is determined not to be the father of the child, the  
18 adjudication of paternity and any orders regarding custody,  
19 visitation, and future payments of support may be vacated.

20 (c) If any party is a minor, he or she may be represented  
21 by his or her general guardian or a guardian ad litem appointed  
22 by the court, which may include an appropriate agency. The  
23 court may align the parties.

24 (d) Regardless of its terms, an agreement, other than a  
25 settlement approved by the court, between an alleged or  
26 presumed father and the mother or child, does not bar an action

1 under this Section.

2 (e) If an action under this Section is brought before the  
3 birth of the child, all proceedings shall be stayed until after  
4 the birth, except for service or process, the taking of  
5 depositions to perpetuate testimony, and the ordering of blood  
6 tests under appropriate circumstances.

7 (Source: P.A. 95-331, eff. 8-21-07.)

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.